



STATE OF INDIANA

MICHAEL R. PENCE, Governor

PUBLIC ACCESS COUNSELOR
LUKE H. BRITT

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

March 23, 2015

Brent A. Snow
6159 West 100 South
Tipton, Indiana 46072

Re: Formal Complaint 15-FC-49; Alleged Violation(s) of the Open Door Law by the Tipton County Wind Energy Economic Development Fund Committee

Dear Mr. Snow,

This advisory opinion is in response to your formal complaint alleging the Tipton County Wind Energy Economic Development Fund Committee violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et. seq.* The Committee has responded via Mark R. Regnier, Esq., Counsel. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on February 9, 2015.

BACKGROUND

Your complaint dated February 2, 2015 alleges a violation of the Open Door Law by the Tipton County Wind Energy Economic Development Fund Committee ("Committee"). The complaint alleges the Committee failed to provide public notice of an executive meeting on January 28, 2015. You contend that particular Committee's purpose is to advise Tipton County officials and other governing bodies as to the use of funds; and therefore, the Committee is to be considered a public agency under the Ind. Code § 5-14-1.5-2(a)(5).

WEDC responded to your complaint on February 25, 2015. Counsel contends the Committee is "strictly an advisory group" and is "without the power or authority" to take action for Tipton County. Counsel admits while the January 28, 2015 meeting was improperly noticed; however, because the Committee has no authority to take action, no official decisions were made at the meeting. Instead, the Committee's recommendations were made public at a properly noticed town meeting.

ANALYSIS

It is the intent of the Open Door Law (ODL) the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, in order that the people may be fully informed. See Ind. Code § 5-14-1.5-1. Accordingly, except as provided in section 6.1 of the ODL, all meetings of the governing bodies of public agencies must be open at all times for the purpose of permitting members of the public to observe and record them. See Ind. Code § 5-14-1.5-3(a).

The ODL defines a governing body as: two (2) or more individuals who are: any committee appointed directly by the governing body or its presiding officer to which authority to take official action upon public business has been delegated. See Ind. Code § 5-14-1.5-2(b). The Committee reasons that because final action was not taken and the Committee is advisory in nature, the Open Door Law does not apply.

On the contrary, because it is clear a committee taking official action upon public business is considered a governing body, the Open Door Law provisions of openness and notice do apply. Official action is very broadly defined by our state legislature to include everything from merely "receiving information" and "deliberating" (defined by Indiana Code 5-14-1.5-2(i) as discussing), to making recommendations, establishing policy, making decisions, or taking a vote. Ind. Code § 5-14- 1.5-2(d). "Meeting" means a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business. Ind. Code 5-14-1.5-2(c).

A majority of a governing body which gathers together for any one or more of these purposes is required to post notice of the date, time and place of its meetings at least forty-eight (48) hours in advance of the meeting, not including weekends or holidays. Ind. Code § 5-14-1.5-5(a).

The Committee does not dispute it is appointed by another governing body and is not merely an *ad hoc* gathering of interested members of a bigger board. Their meetings appear to be regularly held for the purpose of taking official action on public business. Final action is not a condition precedent to be considered a meeting under the Open Door Law.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the Tipton County Wind Energy Economic Development Fund Committee has violated the Open Door Law.

Regards,

A handwritten signature in black ink, appearing to be 'LHB', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor

Cc: Mark R. Regnier, Esq.